

## Chapter Trans 115

### THIRD PARTY TESTING

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**Trans 115.01 Purpose.** As authorized by s. 343.02, Stats., the purpose of this chapter is to establish policies and procedures to authorize persons, other than employes of the department, to conduct the commercial driver license skills tests required of commercial driver license applicants. Authority to administer CDL skills tests will be granted only to third party testers under agreement with the department and utilizing third party examiners recognized and deemed qualified by the department.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**Trans 115.02 Definitions.** The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In addition, in this chapter:

(1) "Authority" or "authorization" means the document issued to a third party tester allowing the holder to administer the authorized testing program on behalf of the department.

(2) "Authorized testing program" means the CDL skills tests required by the department which shall be administered by a third party tester.

(3) "CDL" means commercial driver license.

(4) "CDL skills test" means the test of a person's ability to drive a commercial motor vehicle by performing the pre-trip, basic control and road test maneuvers required by ch. Trans 104.

(5) "CMV" means commercial motor vehicle.

(6) "Department sanctioned CDL examiner training course" means a course conducted by the department or a school of the Wisconsin technical college system authorized by the department, to prepare a person to conduct the CDL skills test.

(7) "Examiner identification certificate" means a certificate issued to a person who has been authorized by the department as a qualified third party examiner to conduct the CDL skills test.

(8) "FMCSA" means the federal motor carrier safety administration.

(9) "FMCSR" means the federal motor carrier safety regulations promulgated by the U.S. department of transportation.

(10) "Primary place of business" means the central operating location of the third party tester in the state of Wisconsin.

(11) "Third party examiner" means a person who is employed by a third party tester and who holds a valid examiner identification certificate issued by the department.

(12) "Third party tester" means a person including, but not limited to, an agency or department of this state or its political subdivisions or another state, or a private employer authorized by the department to administer the authorized testing program for CDL applicants in accordance with this chapter.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (1), Register, November, 1995, No. 479, eff. 12-1-95; correction in (6) made under s. 13.93 (2m) (b) 6., Stats., Register, November, 1995, No. 479; CR 15-065: r. and recr. (8) Register August 2016 No. 728, eff. 9-1-16.

**Trans 115.03 Employment of department employes.** No third party tester granted authority under the provisions of this chapter may engage the service of an employe of the department as an examiner, agent or employe.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**Trans 115.04 Requirements for third party testers.**

(1) To be granted third party tester authority, a party shall:

(a) Make application to and enter into an agreement with the department. The application shall be made on a form supplied by the department and include all of the following:

1. Certification that the applicant maintains a primary place of business with at least one permanent regularly occupied structure.

2. Certification that the primary place of business is safe, meets all requirements of state law and local ordinances, and, along with all records, is locked and secured when not in use.

3. The official name, address and telephone number of the primary place of business.

4. Certification that the applicant employs a safety officer or official who is responsible for the organization's third party testing operation.

5. The name, title, address and telephone number of the safety officer or other official who has been designated as a contact person with the department.

6. Certification that the applicant employs at least one third party examiner.

7. The type of organization the applicant represents including, but not limited to, governmental entity, association, motor carrier, educational institution.

8. If applicable, a description of the vehicle fleet owned or leased by the applicant, including the number of CMVs by class and type.

9. The class of testing and endorsements for which the applicant is applying.

10. If applicable, the total number of Wisconsin licensed drivers employed to operate CMVs.

11. A designated skills test route or routes acceptable to the department which shall include all of the following:

a. The address of each Wisconsin location where the applicant intends to conduct the CDL skills tests.

b. A description of the off-road facilities as well as a map, drawing or written description of each test route that will be used for the on-road portion of the CDL skills test.

12. A \$100 application fee.

(2) The department will evaluate the materials submitted by the third party tester applicant, and if the application materials are satisfactory, the department shall schedule an on-site inspection and audit of the applicant's third party testing program.

(3) As a condition of any grant of authority, an approved third party tester shall:

(a) Continue to satisfy all the terms and conditions required in the application process.

(b) Not exceed the fee set by the department for applicants taking a CDL skills test or the prorated fee for any portion of the test.

(c) Allow FMCSA or the department, or both, to conduct scheduled and unscheduled examinations, inspections and audits.

(d) Maintain at the primary place of business an alphabetical driver file listing each CDL skills test conducted, whether the

driver passes or fails the test. Each record shall be maintained for a minimum of 2 years and include all of the following:

1. The driver's complete name, address, phone number and employer.
2. The driver's current license number, license class, license endorsements, license restrictions, expiration date and issuing jurisdiction.
3. The dates the driver took the CDL skills tests.
4. The CDL classification, endorsements and restrictions applied for by the CDL applicant.
5. The test score sheets showing the results of the CDL skills tests.
6. The name and certificate number of the third party examiner conducting the CDL skills test.
7. Copies of receipts for fees collected from CDL applicants.
8. The registration number of the CMVs used during the testing.
9. A copy of the written agreement, if applicable, with any person being tested.

(e) Maintain at the primary place of business an annual log of CDL skills tests conducted, whether the driver passes or fails the test. Each record shall be maintained for a minimum of 2 years and include all of the following:

1. The date of the skills test.
2. The driver's name.
3. The CDL classification, endorsements and restrictions applied for by the CDL applicant.
4. The name and certificate number of the third party examiner conducting the CDL skills test.
5. The results of the CDL skills test.

(f) Maintain a record, at the primary place of business, for each third party examiner in the employ of the third party tester. Each record shall be maintained for a minimum of 5 years and include all of the following:

1. A copy of a valid certificate.
2. A copy of the third party examiner's current driving record, which must be updated annually.
3. Evidence that the third party examiner is an employe of the third party tester.

(g) Ensure that the CDL skills tests are conducted in accordance with the requirements of ch. Trans 104 and the instructions provided by the department.

(gm) Ensure that the CDL skills tests are scheduled no later than two business days prior to each test using electronic means authorized by the department.

**Note:** The two-day scheduling period is required by 49 C.F.R. 383.75(a)(8)(viii).

(h) Provide proof of successful test completion, on a form provided by the department, to each driver applicant who passes the required CDL skills test. This CDL skills test certification form shall provide a record of all tests or portions of tests passed or failed. The driver applicant shall present this form to the department as a condition of obtaining a CDL.

(hm) Report all CDL test results to the department within 48 hours of test completion using a department-approved secure electronic means. Results from successful or unsuccessful CDL pre-trip inspections, basic CMV control and road skills tests, and records of all other CDL tests or portions of tests passed or failed shall be reported under this paragraph.

**Note:** 49 C.F.R.383.75(b) requires electronic reporting of CDL test results to the Department by secure electronic means.

(i) Notify the department of each driver applicant who fails the basic controls and road test portion of the CDL skills test in the following manner:

1. In the manner directed by the department.
2. Within 48 hours.

3. On a CDL skills test score sheet form provided by the department.

(j) Ensure that vehicles used for CDL skills tests are properly registered and meet minimum safety requirements of federal and state law.

(k) Administer a minimum of 10 CDL skills tests per year for different individuals.

(L) Request and obtain authorization from the department for any proposed changes in the CDL skills test route, test content, or test procedures.

(m) Notify the department in writing of any of the following:

1. Any change of third party tester name or address 30 days prior to the change.

2. Discontinuation of business in Wisconsin as a third party tester.

3. Any third party examiner who fails to comply with any of the department's CDL skills test requirements.

(n) Not permit any individual to administer a skills test to an applicant who received CDL training from that individual.

**Note:** 49 C.F.R. 383.75(a)(7) provides that if an individual receives skills training from an instructor, that instructor may not administer a third party skills test of the individual. The analysis for the regulation at 78 FR 17877 (March 25, 2013) states that FMCSA intends that instructors who provide any type of training to an individual should not conduct a CDL skills test examination of that individual. This rule is drafted consistently with the expressed intent of the federal regulation.

**History:** Cr Register, December, 1990, No. 420, eff. 1-1-91; r. (1) (a) 7., am. (3) (d) (intro.), 8. and (e) (intro.), Register, June, 1992, No. 438, eff. 7-1-92; am. (3) (d) 1. and 8., and (k), Register, May, 1994, No. 461, eff. 6-1-94; **CR 15-065: am. (1) (a) 2., (3) (c), cr. (3) (gm), (hm), r. and recr. (3) (i) 1., am. (3) (i) 2., (k), cr. (3) (n) Register August 2016 No. 728, eff. 9-1-16.**

**Trans 115.05 Requirements for third party examiners.** (1) To be granted an examiner identification certificate, a third party examiner shall:

- (a) Make application to the department.
- (b) Possess a valid Wisconsin CDL with classification and endorsements necessary for operation of the class and type of CMV used in the CDL skills tests conducted by the examiner.
- (c) Have 2 years licensed experience operating the class of CMV used in the CDL skills test conducted by the examiner.
- (d) Have successfully passed and paid all fees for a department sanctioned CDL examiner training course.
- (e) Within 4 years prior to application have had no convictions for operating any motor vehicle while intoxicated.
- (f) Within 4 years prior to application have had no operator's license suspensions, revocations, cancellations or disqualifications for a traffic offense other than parking violations.
- (g) Have had no conviction involving fraudulent activities, and within 10 years prior to application and subject to ss. 111.321, 111.322, and 111.335, Stats., have had no felony conviction.

(h) Meet all of the following physical standards:

1. Have no impairment of a hand, arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a CMV or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a CMV.

2. Vision—acuity of 20/40 in either eye and at least 20/100 in the other eye with or without corrective lenses and a horizontal, temporal field of vision of 70 degrees or more from the center in each eye and ability to recognize the colors of traffic signals.

3. Hearing—The applicant shall hear normal spoken voice with or without corrective help.

(2) Application for an examiner's identification certificate shall be made on a form supplied by the department including the following:

- (a) Full name, home and business addresses, date of birth, operator's license number, and telephone number.

- (b) Driving history, including class of current license and any endorsements, and restrictions.

(c) Name, address and telephone number of the applicant's employers who applied for or received authority as a third party tester.

(d) Employer's recommendation of the applicant for an examiner's identification certificate.

(e) Date and place applicant successfully passed department sanctioned CDL examiner training course. An original application shall be accompanied by written proof verifying passage of the course, prepayment of course fees to the department, and completion of the department's fingerprinting process.

(f) The class of testing and endorsements for which the applicant is applying.

(g) A \$25.00 application fee.

(3) The department may require a report of medical examination, completed within the past 90 days, to determine the applicant's ability to perform normal tasks associated with operating a commercial motor vehicle. The cost of obtaining the required medical information is the responsibility of the third party examiner.

(4) The department will evaluate the materials submitted by each third party examiner applicant including the applicant's driving record and may test him or her for knowledge and skill.

(5) As a condition of a grant of an examiner's identification certificate, a third party examiner shall:

(a) Continue to satisfy all the terms and conditions in subs. (1) and (2).

(b) Take part in all department required training courses, including retaking full, partial, or specialized CDL skills test examiner training when warranted because of performance or compliance issues, and all other department required workshops, and seminars. A person who has not had a valid certificate in the past 4 years shall retake department sanctioned CDL training.

(bm) Successfully complete a refresher training course and examination every four years. The refresher training course shall comply with the requirements of 49 CFR 384.228(f).

**Note:** This refresher training requirement is imposed upon states at 49 CFR 384.228(f). The State is required to rescind certification to act as a third party tester if a person fails to complete mandatory refresher training. See 49 CFR 384.228(j)(1).

(c) Conduct a minimum of 10 CDL skills tests per year for different individuals in accordance with this chapter and current instructions provided by the department. The examiner's identification certificate shall be revoked for failure to meet this requirement.

**Note:** See 49 C.F.R. 383.75(c).

(d) Notify the department in writing within 10 days of any of the following:

1. Any change of employment with third party testers.
2. Any change in class of commercial driver's license testing authorization.

(e) Not administer a skills test to any person that the examiner has provided any CDL related training.

**Note:** See 49 C.F.R. 383.75(a)(7) and s. Trans 115.04 (3) (n) (note).

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (1) (b) and (5) (c), Register, June, 1992, No. 438, eff. 7-1-92; **CR 15-065; am. (1) (g), (2) (a), (e), (5) (b), cr. (5) (bm), am. (5) (c), cr. (5) (e) Register August 2016 No. 728, eff. 9-1-16.**

**Trans 115.06 Authority and certificates. (1)** An authorization document shall be issued to each qualified third party tester.

(2) An examiner's identification certificate shall be issued to each qualified examiner of the third party tester.

(3) A copy of the examiner's identification certificate shall be displayed in the primary place of business of the third party tester.

(4) The authorization document issued by the department to a third party testing program shall be displayed in the primary place of business of the third party tester.

(5) A third party tester authorization or examiner identification certificate shall be non-transferable.

(6) Each authorization document or examiner identification certificate shall be effective on the date of issuance and shall expire at the end of the calendar year, except that it shall expire at the end of the next calendar year if issued after June 30.

(7) All renewal application forms and fees shall be submitted to the department not less than 30 days prior to the time the previous authorization or examiner's identification certificate expires.

**Note:** The department will not be responsible for the timely issuance of any renewal authorization document or examiner's identification certificate when the application is not received in the required time frame.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (7), Register, June, 1992, No. 438, eff. 7-1-92.

**Trans 115.07 On-site inspections and audits. (1)** A new applicant for third party tester authority shall allow the FMCSA or the department, or both, to inspect and audit its operations, facilities and records as they relate to its third party testing program, for the purpose of determining whether the applicant is qualified to be granted authority.

(2) A third party tester who has been granted authority shall allow the department or FMCSA, or both, to inspect and audit its third party testing program to determine whether it remains in compliance with this chapter.

(3) The department or FMCSA, or both, may perform inspections and audits at any time with or without prior notice to the third party tester.

(4) Inspections and audits shall be conducted at least biennially and shall include an examination of all of the following:

- (a) Records relating to the third party testing program.
- (b) Evidence of compliance with the FMCSR, Wisconsin statutes and this chapter.
- (c) Skills testing procedures, practices and requirements.
- (d) Vehicles used for testing.
- (e) Qualifications of third party examiners.

(f) Effectiveness of the CDL skills test program which shall be determined by any of the following means:

1. Having department employees take the CDL skills tests actually administered by the third party examiner.
2. Retesting a sample of drivers who were examined by the third party.
3. Having department employees' co-score along with the third party examiner during CDL skills tests.

(g) Any other aspect of the third party tester's operation that the department determines is necessary to verify that the third party tester meets the requirements of this chapter.

(5) The department shall prepare a written report of the results of each inspection and audit. A copy of the report shall be provided to the third party tester.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; **CR 15-065; am. (1) to (3), (4) (intro.), cr. (4) (f) 3. Register August 2016 No. 728, eff. 9-1-16.**

**Trans 115.08 Professional conduct and advertising.**

(1) Third party examiners shall conduct themselves in a professional manner and display good driving behavior.

(2) A third party tester may advertise that the tester is authorized by the department of transportation to conduct CDL skills tests but may not indicate that a program is approved, sanctioned, or in any other way endorsed by the department over another program.

(3) No third party examiner or tester or employe or agent of a third party tester shall:

- (a) Publish, advertise or imply any of the following:
  1. That a program can issue or guarantee the issuance of a CDL.

2. That the tester can influence the department's decision to issue a CDL.

3. That preferential or advantageous treatment from the department can be obtained.

(b) Provide CDL applicants with exact copies of testing material used by the department to conduct CDL examinations.

(c) Accept bribes or offer anything of value to influence the CDL examination, or issuance of a CDL completion form or license.

(d) Solicit any individual on a premises rented, leased, or owned by the department for the purpose of enrolling that individual in any third party testing program.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**Trans 115.09 Minimum insurance and bond requirements.** (1) All third party testers shall maintain commercial insurance coverages and limits as follows:

<u>Coverage</u>	<u>Limits</u>
Comprehensive general liability	\$1,000,000 combined single limits per occurrence.
Business auto policy	\$1,000,000 combined single limits—coverage shall apply to owned and non-owned vehicles used in the CDL skills test.
Worker's compensation and employers liability	Worker's compensation—statutory employers liability—\$500,000

(2) As evidence of required insurance coverage, the third party tester shall file with the department one of the following:

(a) A certificate of insurance issued by an insurance company licensed to do business in this state.

(b) A certificate of self insurance issued by a group motor vehicle self insurance pool, stating that there is in effect a contract of insurance providing the coverage required to participate in this program, which certificate shall stipulate that the insurance shall not be canceled except upon 30 days prior written notice to the department.

(c) A certificate of self insurance indicating a net worth in excess of \$20,000,000 issued by the department.

(3) A certificate of insurance or self insurance shall include a make, model, year and identification number of every vehicle which will be used by the third party tester to administer CDL skills tests.

(4) All third party testers that are not an agency or department of this state or its political subdivisions or another state shall maintain a bond in an amount set in a schedule determined by the department. The bond amount shall be sufficient to pay for retesting of drivers in the event the third party tester or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of CDL applicants.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; **CR 15-065: am. (title), cr. (4) Register August 2016 No. 728, eff. 9-1-16.**

**Trans 115.10 Test administration.** (1) Skills tests shall be conducted strictly in accordance with the provisions of ch. Trans 104 and with current test instructions provided by the department. Such instructions may include information on CDL skills test content, route selection, test forms, examiner procedures, and administrative procedures.

(2) Skills tests shall be conducted:

(a) On test routes authorized by the department.

(b) In a CMV that is representative of the class and endorsement for which the CDL applicant seeks to be licensed and for which the third party examiner is qualified to test.

(c) Using department authorized content, forms and scoring procedures.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**Trans 115.11 Denial and cancellation of third party testing.** (1) The department may cancel, deny or refuse to renew a third party tester authorization or an examiner's identification certificate for any of the following:

(a) The organization or person does not qualify as a third party tester or examiner under the provisions of this chapter.

(b) Failure to comply with or satisfy any of the provisions of a third party tester agreement or any other requirements of this chapter.

(c) Fraud or misrepresentation.

(d) Falsification of any records or information relating to third party tester or examiner program.

(e) Commission of any act which compromises the integrity of the third party tester or examiner program.

(2) The department shall cancel or refuse to renew a certificate when the third party examiner's operator's license is suspended, revoked, or canceled.

(3) If the department determines that grounds for cancellation exist for failure to comply with or satisfy any of the requirements of this chapter or the third party tester contract, the department may postpone the cancellation and allow the third party tester or examiner 30 days to correct the deficiency.

(4) A person whose application, examiner identification certificate or third party tester authorization has been denied or canceled under this chapter may request that the department conduct a hearing. The request shall be in writing and filed with the department within 20 days after the date of such denial or cancellation. The department shall schedule the hearing no later than 30 days from the receipt of the request unless a later date is agreed to between the department and the person requesting the hearing. A hearing notice shall be sent to the person's last known address by first class mail.

(5) The results of the hearing conducted by the department for denial or cancellation under this chapter is subject to judicial review in the manner provided in ch. 227, Stats., for the review of administrative decisions.

(6) Any third party tester or examiner shall surrender the authorization or certificate upon demand by the department.

(7) A person whose authorization or certificate has been denied or canceled under this chapter may reapply upon termination of the period of time, if any, set by the department. The department shall require the applicant to provide proof that the conditions that caused the denial or cancellation have been corrected or are no longer applicable.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (4), Register, November, 1995, No. 479, eff. 12-1-95.

**Trans 115.12 Program cancellation.** The department reserves the right to cancel the third party testing program.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.